IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.317 OF 2004
IN
WRIT PETITION NO.4982 OF 2004

The Divisional Manager,
Forest Development Corpn. of
Maharashtra Ltd. and another Appellant

versus

Maharashtra Rajya Van Vikas
Mahamandal Van Kamgar Sanghatana Respondents

K.K.Malpathak, adv. for appellant.
Yogendra Pendse & R.Nair, adv. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 27th October 2004

PC :

1. Admit.

2. Learned counsel appearing for respondents waive service. By consent, appeal is taken up for hearing.

3. This appeal is directed against the order of Mhatre, J. dismissing the writ petition preferred by the appellant. This writ petition was preferred against the interim order passed by the Industrial Court, Thane in a complaint filed under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act). The facts and

circumstances giving rise to this appeal are stated hereinafter.

4. The Divisional Manager, Forest Development Corporation of Maharashtra Limited, respondent no.1 herein, passed an order on 22nd March 2004 stating that forestration work under Maharashtra Forests Tree Project is coming to an end on 31st March 2004 and hence from 1st April 2004 no work will be available to Barmahi Employees at Ganeshpuri, Bhiwandi, Shirsad and Mandavi. However, under Wada Range, work is available for Over Wood Removal (OWR) and Improvement Working Circle (IWC) and other five years schemes, and therefore, the work is made available to 11 Barmahi workers at Wada. Therefore, on the basis of seniority in every Forest Circle 11 Junior most Barmahi workers would be sent to Wada w.e.f. 1st April 2004. The order sets out names of 11 junior most Barmahi workers proposed to be sent to Wada due to non availability of work. This order was challenged by the appellant union by filing Complaint No.92 of 2004 under MRTU & PULP Act, 1971 alleging unfair labour practice on the ground that the employees whose names are set out in the order, have been transferred from their present working place to a distance of about 50 kms. or more, resulting in great hardship. It

is also alleged that the appellants have caused their transfer with malafide motive and thus committed unfair labour practices under items 3, 9 and 10 of Schedule IV of MRTU & PULP Act, 1971. Along with the Complaint, respondent filed an application for interim mandatory direction to the appellants for providing work at the same place. The Industrial Court by order dated 29th April 2004 granted application for interim relief. Being aggrieved, the appellants preferred Writ Petition No.4982 of 2004. Learned single Judge, however, dismissed the writ petition in limine.

5. In our opinion the impugned orders cannot be sustained in law. The employees in question are not holding any post but are daily rated workers working on a project and in fact after end of the project, their services are liable to be terminated. However, in view of direction issued by this Court in Writ Petition No.456 of 1992, the appellants did not terminate their services, but offered them work at Wada in another project. The order dated 22nd March 2004 clearly mentions that the aforestration work has come to an end and in order to accommodate these workers and to provide them livelihood, they are offered work at Wada. By no stretch of imagination this could be

said to be a malafide action. After end of the project, no work will be available to the daily rated employees, and, therefore, no funds are made available to pay their wages. Therefore, they have been provided work at Wada where work is available under OWR and ICW and other Five Years' Schemes. It is true that the alternate place of work is nearly 100 kilo meters away from the village and workers might find it different to travel every day to reach the place of work. We feel that the ends of justice would be served if the daily rated workers in question are paid wages for 30 days instead of 26 days in a month, which would take care of their travelling expenses. We also direct the appellants to provide tents for the workers who are prepared to reside at the site. They shall be also provided with other basic amenities like kitchen, toylet etc..

6. In the result, the impugned orders dated 14th June 2004 and 29th April 2004 are set aside. Hearing of complaint is expedited. It is needless to state that Industrial Court shall decide the complaint on it's own merits without in any way influenced by observations made in this order.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)